

feelings for you. But in this instance, I come back to the simple proposition that there is not a one of us who has not at times in our public career uttered or written statements that we wish we could have revised. I felt in executive session he was sufficiently contrite and acknowledged that he still has the basic concerns about al-Jazeera, and I share those concerns, but a better choice of words might have avoided it. Then all of the networks he enumerated, I didn't get any communications on it from any of them.

I suggest at this time, so that we can move and accommodate all of our colleagues—and I am very grateful to the majority leader and the Democratic leader for allowing these nominations to be acted upon today. For all Members, last night, I am pleased to say, we voice voted the Deputy Secretary of Defense Gordon England, so we made good progress in putting into position those persons who have been designated by the President for the Department of Defense.

NOMINATION OF PETER CYRIL WYCHE FLORY TO BE AN ASSISTANT SECRETARY OF DEFENSE

Mr. WARNER. We now turn to Peter C. W. Flory who became the principal Deputy Assistant Secretary of Defense for International Security Affairs in 2001. In this capacity he serves as the principal assistant to the Assistant Secretary of International Security Affairs who is the principal adviser to the Secretary of Defense on the formulation and coordination of international security strategy and policy for East Asia, South Asia, the Middle East, the Persian Gulf, Africa, and Latin America. I wish to put further facts regarding this distinguished gentleman into the RECORD, but I am very anxious to keep the momentum. I think the concern of my colleague can be best expressed by himself momentarily, perhaps not to Mr. Flory himself but to the matter of process, and that process is an issue that in some respects I share with my distinguished colleague. I yield the floor.

Mr. LEVIN. Mr. President, how many minutes remain?

The PRESIDING OFFICER. There is 14 minutes remaining.

Mr. LEVIN. Mr. President, I want to explain to my colleagues why the Senate should not proceed to the nomination of Peter Flory to be the Assistant Secretary of Defense for International Security Policy.

At its core, this is an issue of the executive branch refusing to provide the Senate with documents that are relevant to the confirmation proceeding.

This issue dates back to the summer of 2003 when I directed the minority staff of the Committee on Armed Services to conduct an inquiry into the flawed intelligence prior to the war in Iraq. As part of that inquiry, I wrote a

request to the Department of Defense in November of 2003 seeking documents relating to the activities of the Office of Under Secretary of Defense for Policy Douglas Feith concerning Iraq. Mr. Flory was a part of that office. It took 18 months of struggle to get as many documents as I could. I did not receive all the documents that were relevant to the inquiry and which are now relevant to the Flory nomination.

The Department of Defense has refused to produce key documents regarding the efforts of that office to develop and disseminate an alternative intelligence assessment which exaggerated the relationship between Iraq and al-Qaida. That assessment went directly to senior administration policymakers, bypassing the ordinary intelligence community procedure. These documents are critical to understanding exaggerated statements which were made by senior administration officials that al-Qaida and Iraq were allies, despite the conclusion of the intelligence community that there was no such link between the two.

Here is the critical connection between the Feith office and Mr. Flory: Mr. Flory worked in the office of Under Secretary Feith at the time the alternative assessment was developed and disseminated. Some of the internal e-mails we have been able to obtain indicate Mr. Flory requested and received briefings on the collection of intelligence from the Iraqi National Congress in December 2002. The INC material should have been evaluated by the intelligence community and filtered through their screen. Instead, it went to the Feith policy shop, which included Mr. Flory.

Mr. Flory was also a member of Mr. Feith's briefing team which came to the Senate in June of 2003 to explain to the Senate Committee on Armed Services staff the origins and work of the Office of Special Plans and the Policy Counterterrorism Evaluation group. Those were the two entities within Secretary Feith's office that were very much involved in characterizing the prewar intelligence.

In addition to the denial of relevant documents, the inspector general of the Department of Defense is currently conducting a review to determine whether Mr. Feith's office conducted unauthorized, unlawful, or inappropriate intelligence activities. We do not know what, if anything, that review may reveal about the role Mr. Flory may have played in such activities. What we do know is that his name appears in a number of relevant documents we have been able to obtain so far.

Before the Senate proceeds to his nomination, the Defense Department should provide the documents they have previously denied, or resolve the matter in a satisfactory manner, and the inspector general's office should be allowed to complete its investigation of the activities of Under Secretary Feith's office. That investigation may

shed additional light on Mr. Flory's activities. It may show absolutely nothing about Mr. Flory's activities, but we will have to await its conclusion to know.

This is not a case of blocking Mr. Flory from occupying the office to which he has been nominated. I want to emphasize this for our colleagues: Mr. Flory has received a recess appointment. He occupies the office. He is currently serving in the position to which he was nominated. So there should be no argument that we need to give up a vital institutional right to obtain documents relevant to our carrying out of our confirmation function. Again, Mr. Flory occupies the office to which he has been nominated. The issue here is whether we are going to have access to documents that are relevant or may be relevant to this nomination.

I want to provide a little bit of additional background and context for this issue to indicate the seriousness of these matters to this institution's obligations and responsibilities. In the period before the war, the intelligence community did not find a substantial link between Iraq and al-Qaida. The intelligence community stated that the relationship "appears to more closely resemble that of two independent actors trying to exploit each other," and that "al-Qaida, including bin Laden personally, and Saddam were leery of close cooperation." Nonetheless, senior administration officials alleged at times that Iraq and al-Qaida were "allies" and that there was a close connection and cooperative context between Iraqi officials and members of al-Qaida.

How could that happen? How could there be such a disconnect between what the intelligence community believed and what some of the senior administration officials were saying? For one thing, there is evidence that there was an alternative intelligence assessment, an alternative assessment that did not go through the intelligence community or the CIA; an alternative assessment that was prepared by Under Secretary Feith and his office, and that this was an important source for those administration statements. For example, the Vice President specifically stated that an article based on a leaked version of the Feith shop analysis was the "best source of information" on this issue. The Feith assessment was presented directly to senior administration officials by Secretary Feith, including White House officials, a very different assessment from that of the CIA.

This issue of the alleged Iraq-al-Qaida connection was central to the administration's efforts to make its case for war against Iraq. And according to public opinion polling, more than 60 percent of Americans believed there was a connection between Saddam and the horrific attacks of 9/11, although there has never been any evidence of such a connection. The Feith

operation product, which bypassed the intelligence community, went directly to top leaders and, it quite clearly appears, had a major impact on the lives of Americans and on the course of events in Iraq.

The process of seeking the relevant documents on this matter from the Department of Defense has been painfully slow and laborious. I have written many letters and raised the issue of the Department's insufficient response and slow response on numerous occasions. I have also raised the issue at hearings of the Committee on Armed Services with senior Defense Department officials. I raised it with Mr. Flory at his nomination hearing in July 2004, but the Department was still slow to respond. Sometimes the Department of Defense indicated there were no additional documents responsive to my request, only to be followed by acknowledgments that there were more documents. Documents were dribbled out. It was always a struggle. This chart behind me indicates the list of some of the efforts that were made to get documents relating to the Feith operation of which Mr. Flory was a part, and some of the documents that we have been able to receive in which Mr. Flory is named.

I finally met with Acting Deputy Secretary of Defense Gordon England in June of 2005 to discuss the documents I was seeking. Secretary England was able to provide a large number of additional documents in July. He also stated at that time they were the last documents the Department would release, and that there were 58 additional documents the Department would not release. So that is what it came down to: 58 documents that they have, responsive to my continuing requests, which may—may—like some of the documents we did receive, relate to Mr. Flory. We don't know until we get the documents. We have a right to the documents. The Senate, to the last person, should insist upon relevant documents. This should be an institutional issue where we all defend each other's rights to get documents that are relevant to a confirmation.

In late July 2005, I offered to lift my objection to proceeding with the Flory nomination if the administration would simply provide a list of the 58 documents they are not going to provide. Just give us the list, together with an indication that the President's senior advisors would recommend that he invoke executive privilege with regard to these documents, because that is what we were told orally. All we wanted was the accounting, the inventory. We didn't need the substance. Just tell us: What are the 58 documents? Who wrote whom on what date? Don't give us the substance, we will get along without that, providing you tell us that senior administration officials are going to recommend to the President that executive privilege be asserted.

Defense Department officials, by the way, indicated their willingness to do

this, but it was the administration that declined to agree.

Then Mr. Flory received a recess appointment. So once again, he is in office. By the way, I want to thank my friend from Virginia. He has tried on a number of occasions to help me obtain these documents.

The administration has had the opportunity to resolve this matter in a very simple way. It has chosen not to. I offered the compromise which I have just outlined that the administration finally rejected.

Mr. Flory was a Principal Deputy Assistant Secretary in the Feith office. That office produced an alternative intelligence assessment. That is No. 1. That is his connection to the Feith office.

Second, he is mentioned in a number of the documents which have been made available, and he participated in briefing the Senate Armed Services Committee on behalf of that office, relative to the subject matter we are talking about here today.

I have said that I believe the Senate as an institution should insist on access to documents which may be relevant to a confirmation process. This should not be a partisan issue. We have supported each other's rights to documents consistently. As long as I have been here, we have defended each other's rights to access to documents.

Senator McCain last year or the year before held up promotions and transfers of senior officers in the Air Force because the Department of Defense refused to provide information he sought which was relevant to a proposed Air Force lease of tanker aircraft. We supported him. He was right; he is entitled to that information.

We all supported the nominations, or most of us did. But it was the way in which he chose to obtain relevant information, and we—I think probably every member of the Armed Services Committee—stood up for his right to get documents. That is what this issue is about. Are we as an institution going to stand up for the right of Senators to get documents that are relevant to a confirmation process or which may be relevant to a confirmation process? That is the issue here.

The issue here is this body and what we have a right to, or whether the executive branch—and I don't care who is in the executive branch, Democrat or Republican—can stiff us, can stonewall us in terms of producing documents that may be relevant to a confirmation process.

There is example after example where Senators have taken the position that we should not vote on the confirmation of nominees until documents have been provided. In 1986, Senators said they didn't want to vote on the confirmation of William Rehnquist to be a Supreme Court Justice until after documents were provided. The administration finally provided the information.

Senator Helms in 1991 blocked the nomination of an ambassador until he

received State Department cables in which one of Senator Helms' aides was accused of leaking U.S. intelligence to the Pinochet government.

Mr. President, how much time does Senator HARKIN have?

The PRESIDING OFFICER. Senator HARKIN has 10 minutes remaining.

Mr. LEVIN. He has indicated his willingness to me, and I ask unanimous consent, that I have 3 of those minutes at this time.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. I will not object, but I wish to advise my colleague a number of my colleagues are on the tightest of schedules. I am proposing, on the conclusion of the debate on Flory, we immediately go to an up-or-down vote on Smith followed by a cloture vote on Flory. Is that understood?

Mr. LEVIN. That is the existing unanimous-consent agreement.

Mr. WARNER. If cloture is obtained, will the Senator be willing to have a voice vote on Flory?

Mr. LEVIN. If cloture is obtained, I would be willing. I have to make sure that is acceptable to others.

Mr. WARNER. We will reserve that for the leadership, but as manager that would be my position. I must impress upon colleagues—they are all here, those able to remain for the votes—in order to accommodate a great many, let us hold rigidly to the time schedules allocated for the votes.

Mr. LEVIN. I was perfectly content to have these votes occur immediately after the recess. I am the last one who wants to hold up our colleagues from leaving, and I will abide by the suggestion of the good Senator from Virginia.

The PRESIDING OFFICER. Without objection, the Senator is recognized for 3 additional minutes.

Mr. LEVIN. Senators Helms, KENNEDY, JEFFORDS, all of us—not all of us, many of us at times—have said we should not vote on a nomination until relevant documents have been obtained by the interested Senator, relevant to that confirmation process. We have supported those Senators in getting those documents. It has been an institutional position that Senators should be able to get documents that relate to a confirmation of a particular nominee.

These are documents which relate to this nomination or may relate to this confirmation process. We don't know until we see the documents, but we do know two things, that Mr. Flory was a Principal Deputy Assistant Secretary in the Feith office and he was actively involved in the discussions and the matters to which these documents pertain and that he is named in a number of the documents we have been able to obtain as being involved in this subject matter. That much we know. That is more than enough, it seems to me, for this body to insist that these documents be made available before we vote on his confirmation.

Finally, he is in office now. We are not blocking him from going into that office. He got a recess appointment.

To reiterate, there is nothing novel or unique about holding up a nomination in order to obtain information that is being withheld by executive branch officials. This defense of Senate prerogatives goes back a long way, probably to our beginning.

In 1972, Senator Sam Ervin insisted that the Senate would not vote on the nomination of Richard Kleindienst to be Attorney General until the administration provided information on a deal to drop an antitrust case against ITT in return for a \$400,000 campaign contribution. The administration eventually provided the information and the nomination was confirmed.

In 1991, Senator Helms blocked the nomination of George Fleming Jones to be U.S. Ambassador to Guyana until he received State Department cables in which one of Helms' aides was accused of leaking U.S. intelligence to the Pinochet government. The administration eventually provided the information and the nomination was confirmed.

In 2004, Senator JEFFORDS placed a hold on nominations for four top jobs at the Environmental Protection Agency because of 12 unmet requests for documents over the previous three years. The documents in question related to the Bush administration's changes to air pollution rules.

In short, the Senate has a long-standing practice of holding up nominations in order to obtain documents relevant to confirmation and oversight responsibilities. This has been done by Senators of both parties, in Senates controlled by both parties, and with administrations controlled by both parties.

It is in the interest of the Senate as a whole to uphold our right to documents. It is at times essential to our obtaining the information we need to do our jobs. All colleagues should protect the right of any colleague to documents relevant to a nominee in a confirmation process.

This information that we seek is directly relevant to the nomination of Mr. Flory. The entire Senate should, as an institutional matter, insist on access to the relevant information before we act on his nomination. We should speak with one Senatorial voice against executive branch stonewalling on access to relevant information.

Mr. Flory has received a recess appointment to the position to which he has been nominated. By refusing to act on his nomination until we receive this information, we are not preventing this individual from carrying out his executive duties. On the contrary, it is the Executive Branch which is obstructing the Senate's ability to carry out our confirmation responsibilities when they deny us relevant documents.

I hope every member of the Senate will stand together to defend the right of the Senate to have access to the relevant documents that bear on this nomination.

Mr. WARNER. Mr. President, by way of wrapup, Mr. Flory is nominated to

be Assistant Secretary of Defense for International Security Policy.

Peter C.W. Flory, by recess appointment on August 2, 2005, became Assistant Secretary of Defense for International Security Policy. He previously served from 2001 to the present as the principal assistant to the Assistant Secretary for International Security Affairs, who is the principal advisor to the Secretary of Defense on the formulation and coordination of international security strategy and policy for East Asia, South Asia, the Middle East and Persian Gulf, Africa, and Latin America.

From April 1997 to July 2001, Mr. Flory was Chief Investigative Counsel and Special Counsel to the Senate Select Committee on Intelligence, SSCI. Mr. Flory had responsibility for the People's Republic of China and other regional issues, as well as counterintelligence, covert action, denial and deception, and other intelligence oversight matters.

An Honors Graduate of McGill University, Mr. Flory received his law degree from Georgetown University Law Center. After working as a journalist, he served as a national security advisor to Members of the House Foreign Affairs Committee and Senate Defense Appropriations Subcommittee. From 1989 to 1992, Mr. Flory served as the Special Assistant to Under Secretary of Defense for Policy Paul D. Wolfowitz. From 1992 to 1993, he was an Associate Coordinator for Counter-Terrorism in the Department of State with the rank of Deputy Assistant Secretary. From 1993 until he joined the SSCI staff in 1997, Mr. Flory practiced law with the firm of Hughes, Hubbard & Reed LLP.

Mr. Flory speaks German and French. He and his wife Kathleen have six children, and reside in Nokesville, Virginia.

I would simply conclude, this is somewhat of a dilemma for those not following it. This man is eminently qualified to discharge the responsibilities to which the President has nominated him. There is no doubt in my mind.

I have worked with my colleague. I will continue to work with my colleague. It is no different than other chairmen and ranking members, irrespective of party. We are always in a push-pull contest with the executive branch regarding the documents we need to perform oversight. I do not in any way disparage or criticize my colleague's observations. I think he is meticulously correct in what he has set forward to the Chamber. But the problem is, I am not sure this gentleman was party to in any way the obstruction of those documents coming forward. Those decisions primarily were made by his superiors. I think it would penalize him for actions of superiors, which superiors were acting as they believed in the best interests of the United States, and within the parameters of the time-honored traditions be-

tween the executive and legislative branches about the privacy of certain documents.

I hope now we could move on. I see my friend, the Senator from Rhode Island. Does he have a few concluding words?

Mr. LEVIN. If the Senator will yield, and I apologize for being distracted and not able to hear the Senator, but apparently it was announced already that this would be the last vote today. I think we have to leave it at that.

Mr. WARNER. Wait a minute. I must get from my side a clarification on that. My understanding is there were two votes.

Mr. LEVIN. The last two votes today.

Mr. WARNER. You said the last vote. Let's be clear.

Mr. LEVIN. I apologize. I think the Senator is correct. It has been announced these will be the last two votes, depending on the outcome of the second vote.

Mr. WARNER. We could consequently have a voice vote. I doubt if it will be necessary.

Mr. LEVIN. Let me see if we can accomplish that. Mr. WARNER. I see the Senator from Rhode Island.

Mr. REED. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Five minutes.

Mr. REED. I do not intend to take all that time, but I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. REED. Mr. President, there are two issues with respect to Mr. Flory. The first is access to documents which are necessary for the Senate to do its job. We can't formulate policy, we can't draft legislation, we can't properly review the activities of the Department of Defense if we are denied critical information. This Defense Department persistently, constantly denies information of that sort. This is something about which Senator LEVIN has made the point very well, made the point about his attempts to get information with respect to issues that touch on the activities of Mr. Flory and the activities of others. Senator LEVIN has been denied. Without any justification, without any legal precedent, they simply said we are not giving it to you—and that is outrageous.

Frankly, because we have acquiesced in this policy over many years, we have not done our job in the Senate. We allowed this Defense Department to take military forces to war without a plan for occupation because we didn't ask—demand that they give us the information in that plan. We have done this repeatedly. It has to stop because it has real consequences in the activities of our military and the effect on these young men and women across the globe. We have to do our job. Our job begins with getting this type of information.

It is outrageous that we continue to sit here and literally beg the Defense Department to give us information

that is rightfully ours because of our responsibilities under the Constitution to supervise the activities of the Department of Defense. That is point No. 1.

Point No. 2 is Mr. Flory, by his own job description, was involved with the formulation and coordination of international security strategy and policy for several areas including the Middle East in 2001. As Senator LEVIN pointed out, he was part of this team that developed this alternate intelligence view—alternate in the sense that it was inaccurate, grossly inaccurate.

Now we propose to promote him. There are millions of Americans who are wondering who planned this operation in Iraq so poorly. And if they find out, it is not to give these individuals a promotion. There is real responsibility here and that is the other point I find very difficult to accept. No one seems to be accountable for palpable mistakes that have been made by the Department of Defense in the conduct of these operations—not the Secretary of Defense, not the new Secretary of State, who was the National Security Advisor—and now we are promoting someone who is deeply involved in the Feith operation that created the alternate intelligence view that was at dramatic odds with the intelligence community, with the suggestion that there were serious links between Saddam Hussein, al-Qaida, and other terrorist groups.

I think on both these points we should not proceed to this nomination. We have to have the information necessary to do our jobs. If we do not, we are not doing our jobs. We are not doing our duty. Today I hope is an opportunity to focus attention on, No. 1, the fact we need the information from the Department of Defense, and also I think it is about time someone is held in some degree responsible for errors that have been made by the Department of Defense.

I yield my time.

The PRESIDING OFFICER. The Senator yields.

VOTE ON NOMINATION OF DORRANCE SMITH

Mr. WARNER. Mr. President, I ask for the yeas and nays on the nomination of Dorrance Smith.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Dorrance Smith, of Virginia, to be an Assistant Secretary of Defense?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Kansas (Mr. ROBERTS), and the Senator from Alaska (Mr. STEVENS).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Washington (Mrs. MURRAY), and the Senator from

West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 34, as follows:

[Rollcall Vote No. 91 Ex.]

YEAS—59

Alexander	Domenici	Martinez
Allard	Ensign	McCain
Allen	Enzi	McConnell
Bennett	Feingold	Murkowski
Bond	Frist	Nelson (NE)
Bunning	Graham	Pryor
Burns	Grassley	Santorum
Burr	Gregg	Sessions
Chafee	Hagel	Shelby
Chambliss	Hatch	Smith
Coburn	Hutchison	Snowe
Cochran	Inhofe	Specter
Coleman	Isakson	Sununu
Collins	Kohl	Talent
Cornyn	Kyl	Thomas
Craig	Landrieu	Thune
Crapo	Lieberman	Vitter
DeMint	Lincoln	Voinovich
DeWine	Lott	Warner
Dole	Lugar	

NAYS—34

Akaka	Durbin	Mikulski
Baucus	Feinstein	Nelson (FL)
Bayh	Harkin	Obama
Bingaman	Inouye	Reed
Byrd	Jeffords	Reid
Cantwell	Johnson	Salazar
Carper	Kennedy	Sarbanes
Clinton	Kerry	Schumer
Conrad	Lautenberg	Stabenow
Dayton	Leahy	Wyden
Dodd	Levin	
Dorgan	Menendez	

NOT VOTING—7

Biden	Murray	Stevens
Boxer	Roberts	
Brownback	Rockefeller	

The nomination was agreed to.

The PRESIDING OFFICER. Under the previous order, the President will be immediately notified of the Senate's action.

NOMINATION OF PETER CYRIL WYCHE FLORY TO BE AN ASSISTANT SECRETARY OF DEFENSE

Mr. WARNER. I urge we proceed immediately to the second vote, a cloture vote on Peter Flory.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Peter Cyril Wyche Flory to be an Assistant Secretary of Defense.

Bill Frist, Lamar Alexander, Mike Crapo, Jim Bunning, Richard Burr, Wayne Allard, Johnny Isakson, Richard Shelby, Craig Thomas, Ted Stevens, David Vitter, James Inhofe, Chuck Hagel, Norm Coleman, Mike DeWine, Robert F. Bennett, John Thune.

Mr. WARNER. Mr. President, this will be the last recorded vote of the day. There could be a voice vote subsequently, but this will be the last recorded vote for the record.

Mr. LEVIN. Whether cloture is invoked or not, we have agreed this will be the last vote.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Peter Cyril Wyche Flory, of Virginia, to be an Assistant Secretary of Defense, be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Kansas (Mr. ROBERTS), and the Senator from Alaska (Mr. STEVENS).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Washington (Mrs. MURRAY), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The PRESIDING OFFICER (Mr. THUNE). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 52, nays 41, as follows:

[Rollcall Vote No. 92 Ex.]

YEAS—52

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Santorum
Bond	Enzi	Sessions
Bunning	Frist	Shelby
Burns	Graham	Smith
Burr	Grassley	Snowe
Chafee	Gregg	Specter
Chambliss	Hagel	Sununu
Coburn	Hatch	Talent
Cochran	Hutchison	Thomas
Coleman	Inhofe	Thune
Collins	Isakson	Vitter
Cornyn	Kyl	Voinovich
Craig	Lott	Warner
Crapo	Lugar	
DeMint	Martinez	

NAYS—41

Akaka	Feinstein	Menendez
Baucus	Harkin	Mikulski
Bayh	Inouye	Nelson (FL)
Bingaman	Jeffords	Nelson (NE)
Byrd	Johnson	Obama
Cantwell	Kennedy	Pryor
Carper	Kerry	Reed
Clinton	Kohl	Reid
Conrad	Landrieu	Salazar
Dayton	Lautenberg	Sarbanes
Dodd	Leahy	Schumer
Dorgan	Levin	Stabenow
Durbin	Lieberman	Wyden
Feingold	Lincoln	

NOT VOTING—7

Biden	Murray	Stevens
Boxer	Roberts	
Brownback	Rockefeller	

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. LEVIN. I move to reconsider the vote.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.